

# United States Court of Appeals

## FOR THE EIGHTH CIRCUIT

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No. 96-4212

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Elizabeth Dunham, as personal \*  
representative for Douglas Dunham,

Appellant,

v.

City of O'Fallon, Missouri, a  
Municipal corporation; Michael  
Kernan, individually and in his  
official capacity as Police Chief of  
the City of O'Fallon, Missouri;  
Edward Griesenauer, individually  
and in his official capacity as Mayor  
of the City of O'Fallon, Missouri;  
Board of Alderman of the City of

O'Fallon, Missouri, by and through

its individual members; Dennis Henson,

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Appeals  
from  
the  
United  
States

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District  
Court

for

the

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Eastern  
District  
of

Miss  
ouri  
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individually and in his official capacity  
as Alderman of the City of O'Fallon, \* [UNPUBLISHED]  
Missouri; Paul Renaud, individually \*  
and in his official capacity as Alderman \*  
of the City of O'Fallon, Missouri; \*  
Henry Dussold, individually and in his \*  
official capacity as Alderman of the \*  
City of O'Fallon, Missouri; Eugene \*  
Moser, individually and in his official \*  
capacity as Alderman of the City of \*  
O'Fallon, Missouri; Cliff Hesskamp, \*  
individually and in his official capacity \*  
as Alderman of the City of O'Fallon, \*  
Missouri; Joe Salemi, individually \*  
and in his official capacity as \*

Alderman of the City of O'Fallon,  
Missouri; Kenneth Molloy, individually  
and in his official capacity as  
Alderman of the City of O'Fallon,  
Missouri; Rose Mack, individually and  
in her official capacity as Alderman  
of the City of O'Fallon, Missouri;

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Appellees.

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No. 97-1430

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John Fomera; Christine Fomera,

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Appellant,

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v.

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City of O'Fallon, Missouri, a  
Municipal corporation; Michael  
Kernan, individually and in his  
official capacity as Police Chief of  
the City of O'Fallon, Missouri;  
Edward Griesenauer, individually  
and in his official capacity as Mayor  
of the City of O'Fallon, Missouri;  
Board of Alderman of the City of  
O'Fallon, Missouri, by and through  
its individual members; Dennis Henson,  
individually and in his official capacity  
as Alderman of the City of O'Fallon,  
Missouri; Paul Renaud, individually  
and in his official capacity as Alderman  
of the City of O'Fallon, Missouri;  
Henry Dussold, individually and in his  
official capacity as Alderman of the

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City of O'Fallon, Missouri; Eugene	*
Moser, individually and in his official	*
capacity as Alderman of the City of	*
O'Fallon, Missouri; Cliff Hesskamp,	*
individually and in his official capacity	*
as Alderman of the City of O'Fallon,	*
Missouri; Joe Salemi, individually	*
and in his official capacity as	*
Alderman of the City of O'Fallon,	*
Missouri; Kenneth Molloy, individually	*
and in his official capacity as	*
Alderman of the City of O'Fallon,	*
Missouri; Rose Mack, individually and	*
in her official capacity as Alderman	*
of the City of O'Fallon, Missouri;	*
	*
Appellees.	*

Submitted:

September 10, 1997

Filed:

September 25, 1997

Before McMILLIAN, ROSS and MURPHY, Circuit Judges.

PER CURIAM.

Elizabeth Dunham, as personal representative for Douglas Dunham, and John and Christine Fomera appeal from final orders entered in the District Court<sup>1</sup> for the Eastern District of Missouri granting summary judgment in favor of the City of O'Fallon and other defendants on their employment discrimination and related claims.

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<sup>1</sup>The Honorable George F. Gunn, Jr., Senior United States District Judge for the Eastern District of Missouri.

Fomera v. City of O'Fallon, No. 4:95CV00238 (GFG) (E.D. Mo. Dec. 31, 1996) (memorandum and order); Dunham v. City of O'Fallon, 945 F. Supp. 1256 (E.D. Mo. 1996).

The district court held that appellants' employment discrimination and retaliation claims were barred by the applicable 90-day statute of limitations, 945 F. Supp. at 1260-62, citing Garfield v. J.C. Nichols Real Estate, 57 F.3d 662, 666 (8th Cir.) (holding dismissal without prejudice does not toll running of statute of limitations on either federal or state employment discrimination claim), cert. denied, 116 S. Ct. 380 (1995). The district court also held that Elizabeth Dunham was bound by the allegations in Douglas Dunham's original and refiled complaints that he had received a right to sue letter for his age discrimination claim. Id. at 1261. The district court also held the undisputed facts and applicable law did not support the state law claims for intentional infliction of emotional distress and loss of consortium. Id. at 1262-63.

We have carefully reviewed the record and we agree with the analysis of the district court as set forth in its well-reasoned memorandum and order. See 8th Cir. R. 47B. Accordingly, we affirm the judgments of the district court.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH  
CIRCUIT.